

**REMARKS**

At the time of the Office Action dated January 8, 2007, claims 1, 2, 4-7, 9, 10, and 12 were pending. In this Amendment, claims 1, 4-6, 9, and 12 have been amended, and claims 2, 7, and 10 canceled. Care has been exercised to avoid the introduction of new matter. Support for the amendment of claims 1, 4, and 5 can be found in, for example, dependent claim 2; support for the amendment of claims 6 and 12 can be found in, for example, dependent claim 7; and support for the amendment of claim 9 can be found in, for example, dependent claim 10.

**Claims 1, 4-6, 9, and 12 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sano in view of Chi et al.**

This rejection has been rendered moot by the amendment of independent claims 1, 4-6, 9, and 12 based on dependent claims 2, 7, and 10. Withdrawal of the rejection is respectfully solicited.

**Claims 2, 7, and 10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sano in view of Chi et al., and further in view of Lohman et al.**

Independent claims 1, 4-6, 9, and 12 include the limitations recited in canceled claims 2, 7, and 10. Accordingly, Applicant argues that claims 1, 2, 4-6, 9, and 12 are patentable over Sano, Chi et al., and Lohman et al.

In the statement of the rejection, the Examiner admitted that the applied combination of Sano and Chi et al. does not explicitly disclose that selection of a modulation method and the number of channels is performed based on comparison of permissible delay time with a threshold value. However, the Examiner asserted that Lohman et al. discloses the missing features, and

concluded that the applied combination of Sano, Chi et al., and Lohman et al. teaches all the limitations recited in claims 1, 2, 4-6, 9, and 12.

Applicant submits that the applied combination of Sano, Chi et al., Lohman et al. does not teach a base station apparatus including all the limitations recited in independent claim 1. Specifically, the applied combination does not teach, at a minimum, the following limitations:

if the detected permissible delay time is greater than a predetermined threshold value, said decision unit determines to use a modulation method capable of transmitting a relatively large amount of data according to the derived value indicative of the quality of a communication line, and, subsequently, to use a relatively small number of channels and

if the detected permissible delay time is less than or equal to the predetermined threshold value, said decision unit determines to use a relatively large number of channels in accordance with the number of unoccupied channels, and, subsequently, to use a modulation method that ensures a relatively low error rate.

The following is reproduction of the Examiner's assertion regarding Lohman et al.:

Lohman et al. discloses a radio communications system in which a base station receives a message containing addressing information corresponding to one of a plurality of terminals (page 1, paragraph 6). The addressing information comprises a delay index that is compared to a delay-values (maximum or threshold values) allowed for the cell to maintain certain Quality of Service-which is often used as a Service Level Agreement (page 3, paragraph 35). With receipt of this information, the base station can direct modulation scheme and coding level (page 1, paragraph 5).

Paragraph bridging pages 4 and 5 of the Office Action (emphasis added). On the contrary, Applicant believes that Lohman et al. simply teaches maintaining Quality of Service (QoS) by using a delay index. Lohman et al. in paragraph [0035] describes, "[t]he delay index part... is used to extract the delay-value... this delay value is the maximum delay allowed for the cell to maintain a certain Quality of Service (QoS)...."

In contrast, claim 1 requires that if the detected permissible delay time is greater than a predetermined threshold value, a determination is made to use a modulation method capable of

transmitting a relatively large amount of data, and, subsequently, to use a relatively small number of channels. Claim 1 also requires that if the detected permissible delay time is less than or equal to the predetermined threshold value, a determination is made to use a relatively large number of channels, and, subsequently, to use a modulation method that ensures a relatively low error rate. That is, Lohman et al. does not teach that the claimed invention requires the order of determining a modulation method and determining the number of channels to vary depending on whether the permitted delay time is greater than a threshold value. Furthermore, Sano and Chi et al. are silent on the above requirements of claim 1.

Based on the foregoing, Applicant submits that Sano, Chi et al., and Lohman et al., even if it is assumed that their combination is proper for the sake of this response, do not teach a base station apparatus including all the limitations recited in independent claim 1 within the meaning of 35 U.S.C. §103. The above discussion is applicable to independent claims 4-6, 9, and 12. Applicant, therefore, respectfully solicits withdrawal of the rejection of the claims and favorable consideration thereof.

### **Conclusion**

It should, therefore, be apparent that the imposed rejections have been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

**Application No.: 10/808,526**

including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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